

# Foreword/Introduction

## **Purpose of this Final Supplemental Environmental Impact Statement**

Under the National Environmental Policy Act (NEPA), after completion of a draft environmental impact statement (EIS) a lead agency is required to consult with and obtain comments from public agencies having jurisdiction by law with respect to the proposed action, and to provide the general public with an opportunity to comment on the draft EIS. As joint lead agencies, the Federal Highway Administration (FHWA) and the U.S. Army Corps of Engineers (Corps) are required to respond to significant environmental issues raised during the public review and agency consultation processes.

## **Revisions since the Draft Supplemental EIS**

This Final Supplemental EIS responds to public agency and general public comments received on the Draft Supplemental EIS for the Legacy Parkway project, which was circulated for a 108-day public review period, December 3, 2004, to March 21, 2005. This document also responds to verbal comments received at the public hearing, which was held on January 7, 2005.

In addition, since publication of the Draft Supplemental EIS, various reports have been completed that were in progress when the Draft Supplemental EIS was published, and several analyses have been updated to conform to technical standards that have changed since the Supplemental EIS process began. Any changes required to the Supplemental EIS based on public and agency comments and these finalized reports and updated analyses have been included in this Final Supplemental EIS. In addition, internal editorial comments have been incorporated.

Substantive changes to text, including additions, revisions, or deletions since issuance of the Draft Supplemental EIS, are indicated by a vertical bar in the left or right margin of the page. For various reasons—including minor alignment modifications, information updates, and corrections of inadvertent miscalculations—changes have been made to the calculations of impacts for many resources since the Draft Supplemental EIS was published in December 2004. Explanations of such changes are included in applicable chapters and sections.

Since publication of the Draft Supplemental EIS in December 2004, the traffic model was re-run using consistent land use assumptions, reflecting the robust or maximum future transit scenarios developed through the integration analysis. The traffic model was re-run for all scenarios (years 2001 and 2020) and alternatives to ensure a single, consistent, complete application of WFRC travel model version 3.2 for all scenarios reported in this Supplemental EIS.

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was enacted as Public Law 109-59. SAFETEA-LU authorizes funding for highways, highway safety, and transit for the 5-year period of 2005 to 2009. SAFETEA-LU includes provisions that will change the current transportation planning and environmental review process. While most of the transportation planning requirements became effective when SAFETEA-LU was enacted, implementation of SAFETEA-LU will require an update of current planning regulations. On September 2, 2005, FHWA and the Federal Transit Administration (FTA) issued joint interim guidance for FHWA and FTA field offices to use in implementing SAFETEA-LU when working with their state and local planning partners. One provision that may apply, at the discretion of the federal agencies, is Section 6009. This section allows for a de minimis finding for the use of Section 4(f) properties if certain requirements are met.

Another provision in SAFETEA-LU, as codified in 23 USC Section 139(1)(1), FHWA may publish a notice in the Federal Register that one or more federal agencies have issued permits, licenses, or approvals in connection with this project. If such notice is published, claims seeking judicial review of those federal agency actions will be barred unless such claims are filed within 180 days after the date of publication of the notice, or within such shorter time period as is specified in the federal laws pursuant to which judicial review of the federal agency action is allowed. If no notice is published, then the periods of time otherwise provided by federal laws for such claims apply.

On September 22, 2005, the Utah Department of Transportation (UDOT) entered into an Agreement in Principle with former plaintiffs and other interested parties regarding underlying differences over the Legacy Parkway project. The Agreement in Principle, which is available at UDOT's website ([http://www.udot.utah.gov/download.php/tid=181/Agreement\\_in\\_Principle\\_\\_September.doc](http://www.udot.utah.gov/download.php/tid=181/Agreement_in_Principle__September.doc)), could resolve past and future differences between UDOT and opposition groups over the Legacy Parkway project, and could ensure that the parties will not pursue further litigation against each other on this phase of Legacy Parkway. The Agreement in Principle outlines a framework for negotiation of a Settlement Agreement under which UDOT would implement certain design and operational refinements for the Final Supplemental EIS Preferred Alternative, and would undertake other obligations. The terms of the Agreement in Principle could change certain environmental impacts of the Preferred Alternative. Although generally the impacts are expected to remain the same, they could be reduced. FHWA and the Corps have been fully informed of this development. However, because it is possible that the design refinements might not be implemented as currently stated in the Agreement in Principle, the lead agencies will continue to make their decisions regarding the Legacy Parkway project based on the information presented in this Final Supplemental EIS.

## **Introduction**

This chapter introduces the Supplemental EIS process, provides background on the proposed action evaluated in this Supplemental EIS, summarizes the requirements met by the Supplemental EIS, describes the approach to preparing the draft and final documents, and explains the organization of the Final Supplemental EIS.

This supplemental environmental impact statement/reevaluation (Supplemental EIS) serves as a supplement to the June 2000 *Legacy Parkway Final Environmental Impact Statement and Section 4(f), 6(f) Evaluation* (Final EIS) (FHWA-UT-EIS-98-02-F) (Federal Highway Administration et al. 2000), as required by NEPA. The Supplemental EIS incorporates the results of a comprehensive reevaluation of the Final EIS. In accordance with FHWA NEPA regulations 23 Code of Federal Regulations (CFR) 771.129,

the comprehensive reevaluation was used to determine whether any project information should be updated and revised as part of the Supplemental EIS process.

This Supplemental EIS also contains detailed information addressing issues identified in the court decision of the U.S. Court of Appeals for the Tenth Circuit (*Utahns for Better Transportation et al. v. U.S. Department of Transportation et al.* [305 F.3d 1152 (10th Cir. 2002)]). The appellate court determined that the following specific issues were in need of further review.

- Alternative sequencing of the Shared Solution.
- Integration of Legacy Parkway with mass transit.
- Elimination of the Denver & Rio Grande (D&RG) regional alignment as a feasible alternative based on cost.
- Elimination of the D&RG regional alignment as a feasible alternative based on substantial impacts on existing development.
- Practicability of a narrower right-of-way.
- Impacts on wildlife.

FHWA and the Corps are the federal agencies with primary approval authority over UDOT's proposed Legacy Parkway project. FHWA and the Corps have prepared this Final Supplemental EIS as joint lead agencies. FHWA and the Corps selected the consulting firm of Jones & Stokes as an independent third-party contractor to prepare the Supplemental EIS/reevaluation and then directed Jones & Stokes in its preparation. This chapter describes the background and status of the proposed Legacy Parkway project; the purpose of the Final Supplemental EIS; the approach to preparing the Supplemental EIS, including the public involvement and interagency coordination processes; the roles of the lead and responsible agencies and the required approvals and permits; and the organization of this document.

## **Background and Status of Legacy Parkway Project**

### **Shared Solution**

To address future transportation demands related to projected population growth in the North Corridor (northern Salt Lake County and Davis County), UDOT, the Utah Transit Authority (UTA), and the local communities have planned for a "Shared Solution" consisting of the following main components.

- Expansion of the mass transit system.
- Improvement and expansion of Interstate 15 (I-15).
- Construction of the proposed Legacy Parkway project.

Additional components of the Shared Solution include implementation of intelligent transportation systems (ITS), transportation systems management (TSM), and transportation demand management (TDM) measures. Components of the Shared Solution would be implemented over a 20 to 30 year

timeframe. All these components are intended to meet the projected transportation demand in the North Corridor. More detailed descriptions of the North Corridor, the Shared Solution, and the purpose of and need for the proposed Legacy Parkway project are included in Chapter 1, *Purpose of and Need for Action*.

## Previous Final EIS and Preferred Alternative

The June 2000 Final EIS focused on one component of the Shared Solution, the Legacy Parkway project. The Preferred Alternative for the Legacy Parkway project, as described in the Final EIS, would be a four-lane, limited-access, divided highway in Salt Lake and Davis Counties, Utah, beginning at I-215 and 2100 North in Salt Lake City and extending northward approximately 22.5 kilometers (km) (14 miles [mi]) to the junction of I-15 and U.S. Highway 89 (US-89) near Farmington. The Final EIS Preferred Alternative included a 100-meter (m) (328-foot [ft]) right-of-way, which included a multi-use trail for pedestrians, bicyclists, and equestrians parallel to the highway to link communities in the North Corridor.

## Court Ruling

FHWA, the Corps, and UDOT completed the Final EIS for the proposed Legacy Parkway project in June 2000. FHWA and the Corps issued separate Records of Decision (RODs) approving the Legacy Parkway project in October 2000 and January 2001, respectively. The Corps issued a Section 404 permit pursuant to the federal Clean Water Act (CWA), authorizing the fill of 46 hectares (ha) (114 acres [ac]) of wetlands resulting from construction of the proposed action.

Subsequent to the issuance of the RODs, UBE, the Sierra Club, and the Mayor of Salt Lake City (plaintiffs) filed a lawsuit in federal district court challenging the adequacy of the Final EIS and the issuance of the Section 404 permit. The federal district court upheld both federal agencies' RODs in August 2001. In September 2001, the plaintiffs filed a motion for injunctive relief with the federal court; the federal court denied the motion in October 2001. The plaintiffs appealed the district court ruling and applied for an injunction with the U.S. Court of Appeals for the Tenth Circuit in November 2001. Later in November 2001, the appellate court granted a temporary injunction pending the resolution of appeals. In September 2002, the appellate court issued an opinion affirming in part and remanding in part the district court's decision to uphold the RODs and Section 404 permit. The appellate court ruled in favor of FHWA and the Corps on the majority of the issues, but it ruled that the agencies' actions were arbitrary and capricious in the following areas, based on NEPA requirements.

- Elimination of the D&RG regional alignment as a feasible alternative based on cost.
- Elimination of the D&RG regional alignment as a feasible alternative based on substantial impacts on existing development.
- Practicability of a narrower right-of-way.
- Alternative sequencing of the Shared Solution.
- Integration of Legacy Parkway and mass transit construction plans.
- Impacts on wildlife.

The appellate court also ruled that the Corps' issuance of the Section 404 permit was arbitrary and capricious on the following grounds.

- Insufficient information to determine whether the D&RG regional alignment was a practicable alternative.
- Insufficient information to determine whether a narrower median was a practicable alternative.
- Insufficient information to determine whether a right-of-way without a future utility corridor or berm was a practicable alternative.
- Insufficient information on the impacts on wildlife.

As a result of the appellate court decision, all construction work on Legacy Parkway has been halted, with the following exceptions: right-of-way acquisition, design work, certain activities related to the implementation of the Legacy Nature Preserve mitigation sites, and construction activities associated with the upgrade of the Park Lane (formerly Burke Lane) interchange in Farmington. This work has continued consistent with an agreement of the parties as entered by the court. In April 2003, FHWA and the Corps issued a notice of intent to prepare a Supplemental EIS.

Table Intro-1 below provides key dates and events in the history of the Legacy Parkway project.

**Table Intro-1** Legacy Parkway Project History

Date	Event
March 1997	FHWA issues a notice of intent to prepare an EIS for Legacy-West Davis Highway.
1998	Governor Leavitt changes the name from Legacy-West Davis Highway to Legacy Parkway. Legacy Parkway Nature Preserve concept is unveiled.
September 1998	FHWA publishes the Draft EIS.
June 2000	FHWA files Final EIS for Legacy Parkway.
October 2000	FHWA issues its ROD approving Legacy Parkway.
December 2000	UDOT awards design and construction contract, pending Section 404 permit and notice to proceed.
January 2001	Corps issues its ROD and Section 404 permit. UDOT issues notice to proceed to the contractor to begin limited work. Lawsuits are filed in the federal district court challenging the issuance of the permit and ROD.
April 2001	Plaintiffs and UDOT enter into agreement to limit construction activities to certain locations until August 2001.
May 2001	Construction begins in the north interchange area, particularly Park Lane (formerly Burke Lane), the Burke (Park) Lane extension west of I-15, and the intersection of the Burke (Park) Lane overpasses with I-15 and US-89.
August 2001	Heavy construction begins throughout the Legacy Parkway project area. Federal district court dismisses the plaintiffs' lawsuit, ruling in favor of UDOT and the federal lead agencies.

Date	Event
September 2001	Plaintiffs file a motion of injunctive relief with the federal district court.
October 2001	Federal district court denies the plaintiffs' motion for injunctive relief.
November 2001	Plaintiffs file an appeal and seek injunctive relief with the appellate court.  Tenth Circuit grants a temporary injunction pending resolution of appeals. Construction is put on hold pending the outcome of the appeal. Through the court, UDOT and the Plaintiffs agree on a stipulation to allow certain activities to continue. These activities include design work and right-of-way acquisition as well as work at Burke (Park) Lane in the north interchange.
March 2002	Tenth Circuit hears arguments on the Legacy Parkway case.
September 2002	Tenth Circuit publishes its ruling—affirming in part, reversing in part, and remanding the federal district court decision—finding that the Final EIS is inadequate and that issuance of the Section 404 permit was arbitrary and capricious.
April 2003	FHWA and the Corps, as joint lead agencies, issue a notice of intent to prepare a Supplemental EIS.
December 2004	FHWA and the Corps publish Draft Supplemental EIS.

## **Requirements Met by this Final Supplemental EIS**

The Legacy Parkway Final Supplemental EIS is designed to meet the following requirements.

- Provide additional studies, consistent with the appellate court opinion.
- Follow NEPA requirements regarding the preparation of a supplemental EIS.
- Follow FHWA-specific NEPA requirements regarding conducting a reevaluation of a final EIS.
- Follow Corps' Clean Water Act requirements to support consideration of a Section 404 permit amendment.

To ensure that the Supplemental EIS satisfies all relevant legal requirements, this document addresses the specific issues of concern identified by the appellate court, updates any new significant project information identified during the reevaluation, satisfies NEPA requirements associated with preparing a supplemental environmental document, and presents new and updated information for the Corps to use in its review of the Section 404 permit for the Legacy Parkway project. Each of these requirements is described below.

## **Additional Analysis Required by Tenth Circuit Court**

As described in the previous section, *Background and Status of Legacy Parkway Project*, the appellate court directed FHWA and the Corps to address several specific issues. The lead agencies reviewed all available information and conducted additional studies related to the issues identified by the court decision. The results of these studies are documented in the administrative record, including five technical memoranda, are incorporated in this Supplemental EIS.

## NEPA Requirements

NEPA regulations (40 CFR 1502.9 [c][1]) require a federal agency to prepare a supplemental EIS if:

- the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
- significant new circumstances or information relevant to environmental concerns have a bearing on the proposed action or its impacts.

FHWA regulations (23 CFR 771.129) are similar. The Supplemental EIS process also reflects significant new circumstances and information related to the proposed action that have changed since publication of the Final EIS. These new circumstances and information include any physical or environmental changes to the proposed action or mitigation, compliance with new or revised applicable environmental regulations, and any necessary revisions to the analysis of impacts based on the best current scientific methodology. A supplemental EIS, therefore, typically does not restate information presented in a final EIS, but rather incorporates unchanged information by reference to the final EIS.

## Reevaluation of the Previous Final EIS

Under the FHWA agency-specific NEPA regulations (23 CFR 771.129), FHWA is required to prepare a written evaluation of a final EIS whenever major events to advance a proposed action have not occurred within 3 years of approval of the final EIS. In the case of the Legacy Parkway project, a reevaluation was conducted because continued construction of the project was halted as a result of the appellate court decision, and over 3 years have passed since FHWA filed the Legacy Parkway Final EIS in June 2000. The primary purpose of the reevaluation process is to determine whether any changes in the project; changes in the existing physical or regulatory environment, including project design, concept and scope; or changes in the affected environment, impact analysis, and proposed mitigation measures would result in the need to update technical information in the final EIS.

Typically, FHWA uses a reevaluation process to determine whether an existing EIS is valid or a supplemental EIS is required. In this case, however, the appellate court decision required the preparation of additional studies, which led to FHWA and the Corps' decision to prepare this Supplemental EIS for the proposed action. The reevaluation process, therefore, was not used to decide whether a supplemental EIS should be prepared. Rather, it was used to assess whether issues in addition to those addressed by the court ruling warranted attention in the Supplemental EIS given the time that had passed since the Final EIS. Therefore, the results of both the reevaluation and the analyses required by the court ruling comprise this Supplemental EIS, and this document serves as both the Supplemental EIS and the reevaluation report. Pursuant to NEPA and FHWA's regulation (23 CFR 771.129), this document is subject to the same distribution and public review requirements as the previously published Draft and Final EIS (23 CFR 771.130 [d]).

## Review of the Section 404 Clean Water Act Permit Decision

The Corps issued a Section 404 permit for the Final EIS Preferred Alternative with its ROD in January 2001. As a result of analyses conducted for this Supplemental EIS, UDOT has since reduced the width of the right-of-way of its proposed action. Therefore, concurrent with the release of this Supplemental EIS, UDOT is applying for a modification to its Section 404 permit. The Corps intends to evaluate the request

to modify the Section 404 permit based on the updated and additional information presented in the Supplemental EIS. A detailed description of the Corps' responsibilities under the CWA is included in the section below titled *Lead Agencies and Required Permits and Approvals*.

## **Approach to Preparing the Draft Supplemental EIS**

As directed by FHWA and the Corps, the approach to preparing the Draft Supplemental EIS included the following main components, which occurred concurrently and in coordination with each other.

- Independent technical review of the Legacy Parkway Final EIS, supporting technical studies, and relevant parts of the administrative record to identify the need for updated information, studies, or analysis as required by FHWA NEPA reevaluation requirements (23 CFR 771.129).
- Analysis of the limited deficiencies identified by the appellate court with regard to the Final EIS and Section 404 permit (documented in five technical memoranda and the administrative record) to develop information necessary to support the Supplemental EIS process.
- Comprehensive public participation process.
- Coordination and consultation with cooperating agencies and other federal, state, and local agencies.

Each of these key components of the Supplemental EIS approach is described below.

### **Independent Technical Review and Reevaluation of the Final EIS**

The independent technical review, part of the reevaluation process of the Final EIS, focused on determining the current validity of all the information presented in the Final EIS, including any environmental impacts that had not previously been identified or for which there was new information available. Jones & Stokes performed the independent technical review and provided a written evaluation to the lead agencies. The technical review of the Final EIS focused on determining whether:

- the proposed action and alternatives were substantially different or have changed from the Final EIS to the Supplemental EIS;
- the affected environment has changed, resulting in different project impacts from the Final EIS to the Supplemental EIS;
- relevant regulations or laws have changed since publication of the Final EIS, resulting in new requirements that were not previously addressed;
- mitigation measures or other environmental commitments have changed; or
- the appellate court decision would result in a change to project alternatives, environmental impacts, and/or required mitigation measures, as described above.

The results of the reevaluation were used to develop recommendations on what technical information and analyses in the previous Final EIS needed to be updated and included in the Supplemental EIS to



document the results of the reevaluation process. The results of the technical review/reevaluation process are documented in Chapters 1, 3, and 4 of this Final Supplemental EIS.

An important aspect of the reevaluation was the use of an updated travel demand model developed and maintained by the Wasatch Front Regional Council (WFRC). Specifically, the June 2000 Final EIS used a January 2000 version of the WFRC travel demand model, whereas the Supplemental EIS and associated technical analyses are based on version 3.2, which was developed in fall 2003 and revised in early 2004. Information derived from the updated model affected many of the technical analyses presented in this document, as well as the measures of effectiveness tied to the purpose and need for the proposed action and the analysis specific to the selection and screening of project alternatives.

The new travel demand model has several major differences compared to the January 2000 version, which resulted in changes in the travel demand forecasts and traffic-based impact analyses. For example, the new model has been updated to incorporate new demographic data, based on the 2000 Census; the demographics in the old model were based on the 1990 Census. Additionally, the new model has an improved mode choice module that calculates the transit versus automobile mode split as part of the model output.

The version of the WFRC travel model used for the Supplemental EIS analysis also includes feedback loops that inform trip distribution of congested highway travel times resulting from assignment. Feedback to trip distribution accounts for the fact that, as highway travel times increase due to congestion, travelers shorten and/or direct their trips to avoid congestion points. A similar feedback mechanism affects mode choice, reflecting the extent to which travelers take highway congestion into account when deciding between driving and using transit. These factors influence the total number of automobile trips at any location that experiences congestion. The earlier version of the WFRC model used in the Final EIS included a very preliminary set of feedback capabilities, which have been refined in the current model.

Since publication of the Draft Supplemental EIS in December 2004, the traffic model was re-run using consistent land use assumptions, reflecting the robust or maximum future transit scenarios developed through the integration analysis. The traffic model was re-run for all scenarios (years 2001 and 2020) and alternatives to ensure a single, consistent, complete application of WFRC travel model version 3.2 for all scenarios reported in this Supplemental EIS.

## Technical Memoranda Prepared to Address Issues Identified by Tenth Circuit Court

In addition to the reevaluation of the Final EIS, technical analyses of the issues raised by the court were conducted and five memoranda prepared as part of the Supplemental EIS process to address the following concerns.

- Right-of-way issues, including discussion of the utility corridor, berm, and median widths (Legacy Parkway technical memorandum: *Right-of-Way Issues* [right-of-way technical memorandum]).
- Additional information about the D&RG regional alignment discussed in the Final EIS (Legacy Parkway technical memorandum: *Denver & Rio Grande Corridor Evaluation* [D&RG technical memorandum]).
- Integration of the proposed Legacy Parkway with mass transit (*Technical Memorandum on Integration of Highways and Transit in the North Corridor* [integration technical memorandum]).

- Alternative sequencing of certain projects that comprise the Shared Solution (Legacy Parkway technical memorandum: *Sequencing of the North Corridor Shared Solution* [sequencing technical memorandum]).
- Impacts of the proposed action on wildlife (*Legacy Parkway Wildlife Impacts Analysis Technical Memorandum* [wildlife technical memorandum]).

A description of the approach used for the analysis in each technical memorandum is summarized in Chapter 2, *Tenth Circuit Court Ruling Analysis*, of this document. The results of these analyses presented in the technical memoranda and administrative record were incorporated with the results of the reevaluation of the Final EIS and integrated together to develop this Supplemental EIS.

## Public Participation and Review

NEPA regulations (40 CFR 1501.7) and FHWA regulations (23 CFR 771.123[b]) require an early and open “scoping” process as part of the preparation of an EIS. *Scoping* is the process by which lead agencies solicit input from the public and interested agencies on the nature and extent of the actions, alternatives, and impacts to be addressed in the EIS, and on the methods by which they will be evaluated. Although NEPA does not require a formal scoping process for a supplemental EIS, the lead agencies decided to execute a comprehensive public scoping process for the Legacy Parkway Supplemental EIS because of the complexity of the issues, as well as the interest in and controversy surrounding the project.

The following sections describe the formal scoping period and scoping report, community planning and information committee meetings, small group meetings, and public review of the Draft Supplemental EIS.

### ***Formal Scoping Period and Scoping Report***

Because of the complexity of the issues and the interest in and controversy surrounding the project, FHWA, the Corps, and UDOT implemented a formal scoping process. Specific input was solicited from the public and regulatory community on the nature and extent of the proposed action, proposed action alternatives, potential impacts resulting from implementation of the proposed action, and the methodology used to evaluate and assess the impacts. The formal scoping process for the Supplemental EIS began with the publication of the NOI in the Federal Register on April 1, 2003. The following public involvement opportunities have been provided.

- **Open House Public Meeting.** An open house was held on April 17, 2003, to provide an opportunity for the public to talk directly with FHWA, the Corps, UDOT, and UTA staff regarding the court injunction, the status of the project, the Legacy Nature Preserve, and the Supplemental EIS process. The public was also given the opportunity to provide written comments on the project at the open house. A court reporter was available at the open house to take oral comments from the public on the project.
- **Focus Group Meetings.** Four meetings were held—two on April 28 and two on April 29, 2003—to provide a forum for discussion of the specific issues identified by the appellate court. Agenda topics included the D&RG alternative alignment, a narrower right-of-way for the Legacy Parkway, sequencing of the Shared Solution, integration of Legacy Parkway and mass transit, and wildlife impacts.

- **Legacy Parkway Hotline.** A 24-hour telephone hotline (telephone number 801/951-1039) was established to provide updated project and schedule information as well as an additional opportunity to comment on issues relevant to the Supplemental EIS analysis.

A scoping report was published in August 2003 summarizing written and oral comments received during the formal scoping period. The report is available for review on the Corps' web site (<http://www.spk.usace.army.mil/projects/regulatory/legacyparkway/index.html>) and UDOT's web site ([http://www.udot.utah.gov/legacy/legacy\\_SEIS\\_Summary.htm](http://www.udot.utah.gov/legacy/legacy_SEIS_Summary.htm)).

## ***Community Planning and Information Committee Meetings***

At the Legacy Parkway public scoping meetings held in April 2003, environmental groups and city officials expressed a desire to be more involved in the Legacy Parkway Supplemental EIS process. In response to that request, FHWA and the Corps hosted a series of community planning information committee (CPIC) meetings to provide a public forum for environmental groups and city officials to offer input. The series included four CPIC meetings and one meeting of a CPIC subcommittee. The comments of participants in the four CPIC meetings were summarized in minutes distributed to the participants.

Representatives of local jurisdictions, nongovernmental organizations (including the plaintiffs), and cooperating agencies participated in the CPIC meetings. At the request of the plaintiffs, UBET et al., the U.S. Institute for Environmental Conflict Resolution (USIECR) contacted the lead agencies to offer a conflict resolution process. The lead agencies agreed to use a facilitator on the USIECR roster to facilitate the CPIC meetings. CPIC meetings 2, 3, and 4 were facilitated by the USIECR facilitator, who was hired using public funds.

The CPIC meetings focused on collecting and sharing information critical to completing the technical analysis necessary to address the appellate court's concerns (see Chapter 2, *Tenth Circuit Court Ruling Analysis*). The CPIC had the following three primary goals.

1. Provide a vehicle for the federal agencies to gather and share information relevant to the development of the Draft Supplemental EIS and agency decision making.
2. Afford an opportunity for CPIC members to share ideas about information they want to see in the Draft Supplemental EIS and how to analyze that information.
3. Present updates on the I-15 expansion project, another component of the Shared Solution.

Below is a summary of the topics discussed at each CPIC meeting.

### **CPIC Meeting 1, July 10, 2003**

The first meeting focused on potential Legacy Parkway alignment options within the D&RG regional corridor, the potential for a narrower right-of-way, and the inclusion of a trail within the proposed right-of-way.

### **CPIC Meeting 2, September 10, 2003**

The second meeting focused on the sequencing of the Shared Solution and integration of mass transit with the proposed action. The group discussed the methodology proposed for analyzing potential transit

scenarios, including selection of potential transit enhancements. The discussion was followed by a question-and-answer period.

### **CPIC Subcommittee Meeting, October 7, 2003**

In response to comments received during CPIC meeting 2 (September 2003) and to ensure that the transit-oriented development (TOD) opportunities used for the sequencing and integration analyses accurately reflected local planning efforts and that the hypothetical expansion of TOD used for these analyses reflected the maximum reasonable TOD, a subcommittee meeting was convened in October 2003. During this meeting, participants were asked to review proposed TOD opportunities and compare them to local general plans to determine potential feasibility. The information received during this meeting was used to develop robust transit scenarios supported by local planning experts and local officials. The robust transit scenarios were used in both the integration and sequencing analyses.

### **CPIC Meeting 3, November 5, 2003**

The third meeting focused on the preliminary results of the integration and sequencing analyses. The meeting included a presentation of two robust transit scenarios, which were developed using different combinations of the transit enhancements presented at the September 2003 CPIC meeting. The methodology used to develop the robust transit scenarios was discussed, followed by a question-and-answer period.

### **CPIC Meeting 4, November 6, 2003**

The fourth and final meeting focused on the proposed methodology that would be used to evaluate potential wildlife impacts resulting from implementation of the proposed action. The agenda for this meeting was created in response to specific requests by the nongovernmental organizations and interested individuals. Experts involved in the technical work discussed various elements of the analysis as it related to the specific information requested. Each discussion topic was followed by a question-and-answer period.

### ***Small Group Meetings***

The lead agencies agreed to meet with individuals, organizations, and other interested parties as requested or on an as-needed basis. Specifically, FHWA, the Corps, and UDOT attended the following meetings.

- The federal lead agencies and the applicant met with representatives of UBET and their consultants in December 2002, April 2003, August 2003, October 2003, and January 2004. Alternatives and transit-related issues were the main topic of these meetings.
- The Davis County Council of Governments invited the federal lead agencies and the applicant to attend a meeting in May 2003. FHWA and the applicant attended the meeting, updating the Council of Governments members on the Supplemental EIS process.
- UDOT individually interviewed local community planners from five different cities and Davis County in July 2003. The interviews were intended to identify specific localized impacts of the potential Legacy Parkway alignment options within the D&RG regional corridor, the potential for a narrower right-of-way, and the inclusion of a trail within the proposed right-of-way.

- The Corps and UDOT invited CPIC members to attend a presentation providing an overview on the approach to the wildlife analysis in August 2003. FHWA did not participate in this meeting.
- The federal lead agencies met with representatives of UBET, Future Moves, and the Sierra Club in July 2004 to update them on the status of the traffic modeling and environmental review process.

## **Interagency Consultation and Coordination**

### ***Cooperating Agency Meetings***

To facilitate interagency participation in the preparation of the Supplemental EIS, the U.S. Environmental Protection Agency (EPA), FTA, and U.S. Fish and Wildlife Service (USFWS) agreed to serve as cooperating agencies (sometimes referred to as “partners”) for the Supplemental EIS process. EPA, FTA, and USFWS were responsible for providing early and timely input to the federal lead agencies on the Supplemental EIS and associated technical analyses at regularly scheduled meetings. Individual agency roles are described below. A partnering meeting was held in February 2003 to initiate the Draft Supplemental EIS process, and the lead agencies have met with these agencies throughout the development of the technical review and technical memoranda. Cooperating agency meetings were held in April, May, June, August, and September 2003; in January, March, and May 2004; and in January, April, July, and September 2005. The meetings focused on gaining agency consensus on the technical approach to the Supplemental EIS analyses and discussing agency concerns.

### **U.S. Environmental Protection Agency**

The statement of responsibilities (SOR) signed by EPA, FHWA, and the Corps sets forth EPA’s responsibilities as a cooperating agency. These responsibilities include providing technical review and comment during preparation of the Draft Supplemental EIS on all environmental impacts of the proposed action and on any NEPA issues pursuant to EPA’s Clean Air Act (CAA) Section 309 authorities, participating in development of mitigation measures considered for the Draft Supplemental EIS for impacts on wetlands and water quality, and reviewing and commenting on the Final Supplemental EIS in accordance with Section 309 of the CAA.

In addition to participating in the technical work described above, EPA attended the public meetings during the formal scoping period in April 2003 and the CPIC meetings in September and November 2003. At the request of the federal lead agencies, EPA also attended meetings with FHWA, the Corps, and UDOT engineers and biologists in June, October, August, and November 2003, and May 2004, during the development of the wildlife impacts analysis.

### **U.S. Fish and Wildlife Service**

USFWS agreed to perform the following responsibilities (see Appendix A): consult on relevant technical studies; review project information and results; express USFWS views on subjects within its jurisdiction or expertise; participate in joint public involvement activities; and identify Supplemental EIS content necessary to discharge USFWS’ NEPA responsibilities and other requirements regarding jurisdictional approvals, permits, licenses, and or clearances.

In addition to participating in the technical work described above, USFWS attended the public meetings during the formal scoping period in April 2003 and the CPIC meetings in September and November 2003. At the request of the federal lead agencies, USFWS also attended meetings with FHWA, the Corps, and UDOT engineers and biologists in June, October, August, and November 2003, and May 2004, during the

development of the wildlife impacts analysis. USFWS also participated in meetings to develop/refine mitigation measures in spring 2005.

In addition, on June 29, 2005, USFWS, FHWA, UDOT, and the Utah Department of Natural Resources, Division of Wildlife Resources made a site visit to Farmington Bay Waterfowl Management Area (FBWMA) to review and discuss concerns regarding the possible effects of noise on wildlife and recreation at the eastern entrance area of FBWMA.

### **Federal Transit Administration**

As one of eleven modal administrations in the U.S. Department of Transportation, FTA is responsible for assisting transit agencies. Specific to the Supplemental EIS process, FTA provided early focused review of information developed for the technical analyses and technical memoranda and other information related to the Supplemental EIS pertaining to public transportation, including transit. FTA released the *Weber County to Salt Lake City Commuter Rail Project: Final Environmental Impact Statement and 4(f) Evaluation* in March 2005, and published the ROD in April 2005. FTA coordinated with FHWA and the Corps on information concerning commuter rail transit for use in the analysis for the Supplemental EIS.

In addition to the cooperating agency meetings, FTA attended the formal scoping period public meetings in April 2003.

### **State, Regional, and Local Agencies**

To ensure that the issues and impacts were adequately addressed and to promote interagency cooperation, the following state, regional and local agencies participated in the preparation of information for the Supplemental EIS.

#### **State Agencies**

##### ***Utah Department of Natural Resources, Division of Wildlife Resources***

The mission of the Utah Department of Natural Resources (UDNR), Division of Wildlife Resources is to ensure the future of protected wildlife for its intrinsic, scientific, educational, and recreational values through protection, propagation, management, conservation and distribution throughout the State of Utah (UDNR Division of Wildlife Resources 2002). UDNR Division of Wildlife Resources participated in multiple meetings with FHWA, the Corps, and UDOT engineers and biologists throughout the Supplemental EIS process to provide early focused review of and recommendation on specific scientific aspects of data and methods used to complete the wildlife impacts analysis, and on the results of the analyses as they were completed. These meetings were held in June, October, August, and November 2003, and May 2004. UDNR also attended meetings during the formal scoping period and the CPIC meeting in November 2004 and participated in meetings to develop/refine mitigation measures in spring 2005.

UDNR also participated in the site visit on June 29, 2005, to FBWMA, along with USFWS, FHWA, and UDOT, to review and discuss concerns regarding the possible effects of noise on wildlife and recreation at the eastern entrance area of FBWMA.

#### **Additional State Agencies**

During the course of preparation of technical and permitting information for the Supplemental EIS, the following state agencies were consulted.

- Department of Environmental Quality, Division of Air Quality.
- Department of Natural Resources, Division of Water Rights.

## **Regional Agencies**

### ***Utah Transit Authority***

As an important partner in the development of the Shared Solution, UTA participated in multiple meetings throughout the Supplemental EIS process, including open house and focus group meetings in April 2003, meetings in May, June, July, August, September, October and December 2003 to develop information for the technical analyses and technical memoranda and other information related to the Supplemental EIS, CPIC meetings in September and November 2003, and cooperating agency meetings in April, May, June, and September 2003, and in January and April 2005. In addition, UTA provided applicable information concerning commuter rail transit use and the Weber County to Salt Lake commuter rail project for use in the analysis for the Supplemental EIS.

### ***Wasatch Front Regional Council***

The WFRC participated in multiple meetings held throughout the Supplemental EIS process including open house and focus group meetings held in April, 2003, meetings held to develop information for the technical analyses and technical memoranda and other information related to the Supplemental EIS held in May, June, July, August, September, October and December of 2003 and CPIC meetings held in July, October, September and November 2003. In addition, WFRC provided an updated travel demand model for the analysis for the Supplemental EIS.

## **Local Jurisdictions**

### ***Cities and Counties***

Local jurisdictions that participated in the CPIC meetings described above included the Cities of North Salt Lake, Woods Cross, Bountiful, West Bountiful, Centerville, Farmington, Kaysville, and Fruit Heights. Salt Lake and Davis Counties also participated in the CPIC meetings. Community planners from the Cities of Woods Cross, North Salt Lake, Farmington, Centerville, and West Bountiful, and Davis County were individually interviewed to identify specific, localized impacts associated with potential alignments within the D&RG corridor in July 2003 and in October, November, and December 2004.

Salt Lake City and Envision Utah were invited to participate in the CPIC meetings but declined the invitation.

During the formal scoping period, comment letters were received from the Davis County Council of Governments and Davis County Commission. After the formal scoping period, comment letters were received from the Davis County Commission, Davis County Council of Governments, City of Centerville, City of Woods Cross, and City of Bountiful.

## **Approach to Preparing the Final Supplemental EIS**

This Final Supplemental EIS represents a revision of the Draft Supplemental EIS. The draft document has been revised based on comments received during the public review process and based on modifications and corrections to the draft document identified by the lead agencies and document preparers. In addition,

as described above, various reports have been completed that were in progress when the Draft Supplemental EIS was published, and several analyses have been updated to conform to technical standards that have changed since the Supplemental EIS process began. The Draft Supplemental EIS has been revised to incorporate the results of these finalized reports and updated analyses.

The public participation and review process for the Final Supplemental EIS is described below.

## Public Review of Draft Supplemental EIS

Upon completion of the Draft Supplemental EIS, FHWA and the Corps provided copies of the document to the EPA Office of Federal Activities and issued a notice of availability (NOA) in the *Federal Register*, consistent with NEPA. The NOA provided notice of the public comment period that began on December 3, 2004, and ended on March 21, 2005. The Draft Supplemental EIS was submitted to EPA for circulation to cooperating and reviewing agencies. In addition, FHWA and the Corps distributed more than 400 copies of the Draft Supplemental EIS to federal, state, regional, and local agencies; nongovernmental agencies; and interested individuals. In addition, the document was available for review on the Corps and UDOT's websites, at public libraries, and at local jurisdiction offices in the vicinity of the project area.

## Public Meeting on Draft Supplemental EIS

A public hearing was noticed in the NOA that FHWA and the Corps published for the Draft Supplemental EIS. The public meeting was also advertised in local media outlets: *The Deseret News*, *Salt Lake Tribune*, television, and radio. In addition, a public notice was sent out to approximately 3,500 property owners in the project study area, interested parties, and municipalities soliciting comments on the Draft Supplemental EIS and announcing the public meeting. The meeting was held on January 7, 2005, at the Davis County Fairpark. The public meeting was attended by approximately 500 individuals, including members of the public, members of nongovernmental organizations, and local, state, and federal agency representatives. Participants in the public meeting were invited to voice their comments and complete comment cards. Oral comments were transcribed and are now part of the public record. Comments received at the public meeting are addressed in this document (see Volume 2) along with all written comments received by the lead agencies during the public comment period, December 3, 2004, through March 21, 2005.

## Additional Opportunities for Public Comment

In addition to providing comment at the public meeting and mailing in written comments, the following opportunities were provided for the public to participate in the review of the draft document.

- **Email.** An email address was available for submittal of comments.
- **Legacy Parkway Hotline.** A 24-hour telephone hotline (telephone number 801/951-1039) was available as an additional means of commenting on issues relevant to the Supplemental EIS.



## **Lead Agencies and Required Permits and Approvals**

As discussed earlier, FHWA and the Corps are the two federal lead agencies responsible for preparing the Supplemental EIS and will comply with all applicable laws. UDOT is the project applicant and proponent of the Legacy Parkway project. Pursuant to 23 CFR 771.105(b), FHWA will ensure that alternative courses of action are evaluated and decisions are made in the best overall public interest based on a balanced consideration of the need for safe and efficient transportation; the social, economic, and environmental impacts of the proposed transportation improvement; and national, state and local environmental protection goals. Based on the information presented in the Supplemental EIS and any comments received during its review, FHWA will make a decision on the request to connect the proposed action to I-215 and I-15. Once the Final Supplemental EIS is filed, FHWA will publish an ROD on the proposed action.

The Corps is responsible for ensuring compliance with NEPA (40 CFR 1500–1508) and the CWA (33 CFR 320–331 and 40 CFR 230). Section 404 of the CWA requires a permit be obtained from the Corps for the discharge of dredged or fill material into waters of the U.S., including wetlands. In reviewing UDOT’s request for a permit modification, among other important standards, the Corps will ensure that the proposed action does not significantly degrade aquatic resources, complies with the applicable requirements of other statutes, and is not contrary to the public interest. Additionally, the Corps cannot issue a permit for a project if there is a practicable alternative to the proposal that has less adverse impact on the aquatic ecosystem (commonly called the “least environmentally damaging practicable alternative” or “LEDPA”), as long as that alternative does not have other significant adverse environmental consequences. *Practicable* is defined as “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” Although the term *logistics* is not specifically defined in the CWA regulations, *Webster’s New World Dictionary* defines it as “the managing of the details of an undertaking.” For the purposes of evaluating alternatives in this Supplemental EIS, the Corps considers that logistics includes all of the details associated with implementing an alternative, including not only direct construction impacts such as the relocation of homes or businesses, but also resulting neighborhood changes associated with the alternative. This definition of logistics, for determining practicability of alternatives, is consistent with the reasoning in the Tenth Circuit Court of Appeals’ decision in which the appellate court made the following statement.

*Practicable* is defined as “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes” (40 CFR Section 230.3[q]). In its ROD, the COE found the D&RG Alignment to be infeasible because of its high cost and high impact on existing development (I Aplee. App. At 44–45). *Merriam-Webster’s Collegiate Dictionary* defines infeasible as impracticable (Id. At 618 [9<sup>th</sup> ed. 1991]). Therefore, the Appellants are incorrect in saying that the Federal Agencies applied the wrong legal standard in rejecting the D&RG alternative. The Appellants further argue that even if the impracticable test was applied, it was not met (Aplt. Br. At 23). We can set aside the COE’s action only if we find that the COE abused its discretion, or acted arbitrarily, capriciously, or contrary to law (5 USC Section 706[2][A]). Impact on existing development would appear to fall within both the cost and the logistics portion of the practicable definition. (*Utahns for Better Transportation et al. v. U.S. Department of Transportation et al.* [305 F. 3d 1152 (10th Cir. 2002)]).

The Corps will require UDOT to demonstrate that it has taken steps to avoid wetland impacts where practicable, minimize potential impacts on wetlands, and provide compensation for any remaining unavoidable impacts. Once the Final Supplemental EIS is filed, the Corps will make a decision on the request for modification to UDOT’s permit and prepare an ROD explaining how the permit decision was made.

As the project proponent, UDOT is responsible for supporting the lead agencies by providing technical information as necessary to help the lead agencies fulfill their objectives in developing the Draft Supplemental EIS and providing a project that complies with regulatory requirements of the CWA. While Legacy Parkway is a fully state-funded project, it requires authorization from FHWA for connection to the interstate highway system and permit from the Corps to fill wetlands and waters of the U.S. At the same time, UDOT, as a state agency, is charged with meeting the transportation demands of travelers on Utah roadways and working to maintain the quality of life enjoyed by Utah citizens. As part of designing and implementing the project, UDOT endorses a context-sensitive solution that addresses transportation needs as well as safety concerns and scenic and environmental community values.

UDOT has prepared an application for modification to the CWA Section 404 permit. Alternative E is the alternative for which UDOT is seeking approval from the Corps under Section 404. The introduction to Chapter 1 and Section 3.4 of Chapter 3 describe the roadway features of UDOT's proposed project, which is the subject of UDOT's application for a Section 404 permit modification. In addition, UDOT has included in its application the mitigation that it is requesting that the Corps consider in its evaluation. The mitigation includes a preserve of approximately 849 ha (2,098 ac), and is an updated version of the mitigation that was included in the ROD for the Final EIS Preferred Alternative. If the lead agencies approve selection of Alternative E, UDOT is willing to provide the same level of mitigation, even though Alternative E, which has a reduced right-of-way width compared to the Final EIS Preferred Alternative, would result in fewer wetlands impacts. See Section 3.6, *Land Acquired to Date*, and Appendix F for a more detailed discussion of the Legacy Nature Preserve proposed mitigation.

## **Organization of Final Supplemental EIS**

This Final Supplemental EIS is organized into two volumes. This first volume is the text of the Final Supplemental EIS, including technical appendices. The second volume is the response to comments volume.

### **Volume 1—Final Supplemental EIS**

The organization of Volume 1, the Final Supplemental EIS, generally follows that of the December 2004 Draft Supplemental EIS (FHWA-UT-EIS-98-02-DS), and contains the following chapters.

- Summary
- Foreword/Introduction
- Chapter 1 *Purpose of and Need for Action*
- Chapter 2 *Tenth Circuit Court Ruling Analysis*
- Chapter 3 *Alternatives*
- Chapter 4 *Supplemental Environmental Analysis*
- Chapter 5 *Sections 4(f) and 6(f) Evaluation*
- Chapter 6 *List of Preparers*

- Chapter 7 *Distribution*
- Chapter 8 *References*
- Acronyms and Abbreviations
- Index
- Technical Appendices
  - Appendix A *Consultation and Coordination*
  - Appendix B *2020 Travel Demand Analysis*
  - Appendix C *Noise*
  - Appendix D *Wetlands Functional Assessment*
  - Appendix E *Analysis of the Adequacy of Wetlands and Wildlife Mitigation*
  - Appendix F *Draft Wetlands Mitigation Plan*
  - Appendix G *Updated Cost Estimates*
  - Appendix H *Statement of Commitment*

## **Volume 2—Response to Comments**

Volume 2, the response to comments volume, contains copies of all the written and verbal public comments formally submitted on the Draft Supplemental EIS during the public comment period (December 3, 2004 to March 21, 2005). Volume 2 also contains responses to the comments. The specific organization of Volume 2 is described in more detail in the introductory section of that volume.